

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Europe on 7/4/2003. It is noted, however, that applicant has not filed a certified copy of the Europe Application # 03018182.3 as required by 35 U.S.C. 119(b).

### ***Claim Objections***

2. Claims 1 and 2 are objected to because of the following informalities: The claims refer to both a package and a package item. Examiner assumes that applicant intends that both terms are equivalent. Examiner recommends that applicant use one term to refer to the object of the invention. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**5. Claim 1-6, 9-10, and 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Runge, H. G., U.S. Pat. # 4,898,280 in view of Riestenberg, E. H., U.S. Pat. # 3,326,370**

6. Runge discloses:

- a. Flexible bag made from plastic, (lines 26-27, col. 5, '280)
- b. Moisture and air impermeable, (lines 47-48, col. 6, '280)
- c. Reclosable bag with marginal seal and tear line adjacent to cavity therein, (lines 60-68 col. 2, '280)
- d. Metal strip encapsulated by sealing tape lies along tear line, (lines 7-11, col. 3, '280)
- e. Sealing the metal strip to the bag with sealing tape (lines 57-61, col. 3, '280)
- f. Metal strip is aluminum alloy, (lines 37-39, col. 6, '280)
- g. Metal strip is bendable so as to re-close the opening formed by tearing along the tear line. (lines 13-16 col. 3, '280)
- h. Reclosable bag to be used with food, cheese, (lines 13-16, col. 7, Fig. 5, '280)

7. Riestenberg discloses;

- i. Blister pack or package in which articles are held in transparent tray, (lines 11-13, col. 1, '370)
- j. Transparent tray is held in a paperboard backing card, (lines 15-16, col. 1, '370)

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- k. Tray can be slid between an open and closed position, (lines 17018, col. 1, '370)
  - l. Card is constructed to engage the tray in the open position and prevent inadvertent separation of card and tray, (lines 21-23, col. 1, '370)
  - m. Tab 25 in Fig. 1 and 4, limit the movement of the tray (lines 61-65 col. 2, Fig. 1 & 4, '370)
8. Regarding claims 1 and 10, Runge discloses a bag made of plastic film, (lines 26-27, col. 5, '280) with two seals , a marginal seal, (lines 60-68 col. 2, '280) and metal strip encapsulated by sealing tape, (lines 7-11, col. 3, '280) and opening area, reclosable bag with tear line adjacent to cavity therein, (lines 60-68 col. 2, '280) bendable tape sealed to bag, (lines 57-61, col. 3, '280) but lacks a tray which had a limiting stop. Riestenberg discloses a tray with backing board, (lines 15-16, col. 1, '370), and a mechanism to limit the movement of the tray relative to the backing board. (lines 61-65 col. 2, Fig. 1 & 4, '370)
9. Claim 1 has contains the phrase “means to partially remove said tray from said package only up to a predetermined maximum extent.” The phrase approximates a "means for" functional element, as per 35 USC 112 6<sup>th</sup> paragraph and thus warrants analysis as to whether means plus function is intended. MPEP 2181
10. As per the three prong analysis for 35 USC 112 6<sup>th</sup> paragraph:
- n. the claim must use “means for”,
  - o. the “means for” must be modified by functional language

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p. the “means for” must not be modified by sufficient structure material or acts for achieving the specified function.

11. The instant claim fails in not using the correct form "means for", but passes the other two, in that the claim uses functional language to describe the desired action, but not sufficient to achieve the specified function.

12. However, in the Examiner's opinion, the phrase “means to” can be interpreted as the applicant invoking 112 6<sup>th</sup> pg, and the claim will be examined as per 35 USC 112 6<sup>th</sup> paragraph.

13. The applicant's specification describes the mechanism to limit removal of the tray as two end portions on the tray (element 120 Fig. 3 applicant's specification) that interact with two special seam portions (element 110 Fig. 3 applicant specification) on opening. Thus allowing access to the contents, but restricting the tray from being entirely removed from the package. (pg. 22 PGPub. # 20060246184)

14. The stop tab (element 25 Fig. 4 '370) of the sliding tray of Riestenberg performs in a similar manner, allowing access to the contents of the package, but preventing the tray from being removed from the backing board. (lines 21-23, col. 1, '370)

15. Both mechanisms use a stop tab or tabs, both can be overcome with application of force, and both perform similar functions in limiting movement of the tray.

16. Therefore, Examiner finds that the mechanism to limit movement of the tray defined in '370 to be the equivalent of the mechanism to limit movement of the tray used by the applicant.

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17. Runge and Riestenberg are analogous art in that both are concerned with packaging, Runge with a re-sealable flexible bag for food items, and Riestenberg with a re-closeable blister pack, with a plurality of uses.

18. It would have been obvious to one of ordinary skill in the art to modify the re-sealable bag of Runge to contain the blister pack with sliding tray with stopping mechanism of Runge. The advantage of such arrangement would be the side walls of the blister pack serving as a protective barrier to prevent crushing of delicate comestibles, and the stopping mechanism limiting exposure of the comestibles, and thus a safer packaging system.

19. Regarding claims 2, 3, 4, and 5, Runge and Riestenberg disclose the claimed invention, as discussed above, including that the tape is a metal strip made aluminum alloy, (lines 37-39, col. 6, '280) bendable so as to re-close the opening, (lines 13-16 col. 3, '280) the tape is encapsulated, laminated in plastic. (lines 7-11, col. 3, '280)

20. Regarding claim 6, Runge and Riestenberg disclose the claimed invention, as discussed above, including that the bag has an opening means. (lines 60-68 col. 2, '280)

21. Regarding claims 9 and 12, Runge and Riestenberg disclose the claimed invention, as discussed above, including the tray carries packaged goods, (lines 11-13, col. 1, '370) and that the packaged goods can be cheese. (lines 13-16, col. 7, Fig. 5, '280)

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**22. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Runge, H. G., U.S. Pat. # 4,898,280 in view of Riestenberg, E. H., U.S. Pat. # 3,326,370 and further in view of Edwards, D.N. et al., U.S. Pat. # 6,511,688.**

23. Runge and Riestenberg are taken as listed before;

24. Edwards discloses

q. Multilayer film have a thin oxygen permeability retarding layer which is also permeable to carbon dioxide (lines 20-24, col. 6, '688)

r. Said film structures are useful in the packaging of food products especially cheese. (abstract '688)

25. Regarding claim 11, Runge and Riestenberg disclose the claimed invention, as discussed above, but lack a multilayer film. Edwards discloses a multilayer film to be used in food products, especially cheese. ( lines 20-24, col. 6, '688)

26. Runge, Riestenberg and Edwards are analogous art, in that all are concerned with packaging, with Runge and Edwards being concerned with packaging of comestibles for human consumption.

27. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the multilayer film of Edwards with the packaging techniques of Runge and Riestenberg, in order to have a packaging system suitable for respiring food stuffs like cheese,(lines 30-35 col. 7, '688) and to prevent the accumulation of carbon dioxide in the package while the product is awaiting sale, thus making the product more appealing to the customer.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794